

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

PAUL K. GILSTRAP,	*	
Claimant,	*	
VS.	*	CASE NO. 5:05-CV-165(WDO)
		Social Security Appeal
JO ANNE BARNHART,	*	
Commissioner of Social Security,		
Respondent.	*	

**REPORT AND RECOMMENDATION**

On May 18, 2005, the Claimant filed the current social security appeal pursuant to 42 U.S.C. 405(g). Thereafter, on May 19, 2005, the Claimant attempted to perfect service upon the Defendant. On May 25, 2005, the Defendant filed with the clerk's office a letter to the Claimant, informing him that service had not ben perfected. Since that time, the Claimant has failed to attempt service upon the Defendant in this case.

Federal Rule of Civil Procedure 4(m) provides that "If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or its own initiative after notice to the plaintiff, shall dismiss the action without prejudice...." Because it has now been more than 180 days since the Claimant filed her complaint, the court is within its jurisdiction to dismiss the case without prejudice. As such, on December 2, 2005, the court ordered the Claimant to show cause as to why his case should not be dismissed. To date, no response has been filed by the Claimant.

WHEREFORE, it is hereby RECOMMENDED that this case be DISMISSED for failure to comply with federal procedural rules.

So ORDERED, this 5th Day of January, 2006.

S/G. MALLON FAIRCLOTH  
UNITED STATES MAGISTRATE JUDGE